

Draft terms of proposed agreement between the City of Scottsdale and the ASU Foundation for the ASU Scottsdale Center for New Technology and Innovation

The City of Scottsdale and the ASU Foundation have announced draft terms of a proposed agreement to collaborate in the development of the proposed ASU Scottsdale Center for New Technology and Innovation. The terms cover the main points of a proposed lease with the ASU Foundation for development of 37 acres of the 42-acre property.

The City staff and representatives of the ASU Foundation have developed the following draft terms in structuring this significant, long-term alliance. It will ultimately be up to the Council, with input from the public, and the ASU Foundation Board to determine whether the proposal meets the overall goals of the City and the Foundation. The key goal is a collaboration that would significantly enhance the city's economic base and serve as the cornerstone for revitalization of southern Scottsdale.

Unique characteristics of the proposal

The City and the Foundation have acknowledged from the beginning that the type of development proposed for the Los Arcos site is based on a new concept. It is neither a traditional research park nor a traditional business park. It also is not a traditional university campus. There is no direct model elsewhere in the nation for a parallel type of development or a parallel relationship between a city and a university foundation. Consequently, developing traditional pro forma and calculating financial estimates for the overall economic impact are difficult.

The reason for the city's initial interest in the project lies in a wide range of intangible benefits. This proposal holds potential to positively affect the overall economy of the southern portion of the city – and the city itself. The exact impacts are difficult to quantify, but rest soundly on the city's historic experience of linking quality of life with economic vitality and the recent "Which Way Scottsdale?" study by the Morrison Institute. Anticipated benefits include stabilizing and improving the area's economy by introducing new jobs at the site, by acting as a catalyst to attract new retail and commercial businesses and by increasing the demand for housing. Based on 1.2 million square feet of development, the site could ultimately have 4,000 jobs. The city's initial economic model indicated direct and indirect financial return to the city would be approximately \$175 million over 30 years. The city is currently updating these estimates based on the proposed terms of the lease.

This is not the first time new approaches to community and economic development have been initiated in the community. For example, the Scottsdale Airpark, now the city's largest economic engine, was developed as a result of the city's purchase of the airport. Other innovative ideas that directly involve the city, such as the agreements with the federal Bureau of Reclamation for the development of the Tournament Players Club and

WestWorld, the McDowell Sonoran Preserve and the recent agreements involving the Mayo Clinic and TGen, have demonstrated the worth of strategic investments in new concepts.

Process to date

This proposal is being developed in three phases. The first phase encompassed the negotiations between the ASU Foundation and the Ellman Companies for purchase of the Los Arcos property by the Foundation.

The second phase encompasses the Foundation's proposal that the City purchase the land and lease it to them to develop the Center. Since the City and the Foundation announced the proposal on May 26, the two parties have been negotiating the terms of the lease arrangement between the parties, including the length of the lease, lease payments, a development schedule and performance criteria to ensure that development occurs according to clear goals and timelines.

The draft proposal is now ready for formal City Council and community review. Citizens will have at least four opportunities to ask questions and provide comments directly to the Council and staff over the next two weeks, as well as other opportunities to write, e-mail or call the City:

- Monday, June 21, 5 p.m. – City Council meeting focusing on the details of the agreement between the Foundation and the City. No formal action. Citizen comments, input and questions invited and taken.
- Thursday, June 24, 6-8 p.m. – Open house at the Community Design Studio, 7505 E. Indian School Road. City and ASU representatives will be available in an informal setting to answer citizens' questions and take comments on the proposed agreement between the City and Foundation. Citizens can fill out comment cards that will be transmitted to the City Council.
- Monday, June 28, 5 p.m. – Second City Council discussion of agreement. No formal action. Again, citizen comments, questions and input invited and taken.
- Tuesday or Wednesday, July 6 or 7, 5 p.m. – Formal City Council consideration of the proposed agreement. Again, citizen comments, questions and input invited and taken.

If the City Council and ASU Foundation Board endorse the agreement, the third phase – implementation –will begin.

The Proposal

This proposal is more significant than just a real estate transaction because of the nature of the proposed use (a new technology and innovation center), the resources of the City and the ASU Foundation, and the creation of a unique relationship between Arizona State University and the City. The following is the outline of the proposal:

Summary of Key Provisions of the Proposed Lease Relating to the “Los Arcos” Property June 18, 2004

The City of Scottsdale (“City”) is considering an acquisition (by purchase) of title to the “Los Arcos” parcel from the ASU Foundation or an affiliate of the Foundation. Simultaneously, the City would enter into a Groundlease Agreement (the “Lease”) which would govern future development and use of the site. The principal terms of the proposed Lease are summarized below.

1. **Parties.** The Lessor will be the City; the Lessee will be ASUF Scottsdale, L.L.C., a not-for-profit, limited liability company affiliate of the ASU Foundation (hereinafter referred to as “ASUF”).
2. **The Leased Premises.** The Los Arcos property to be acquired by the City consists of approximately 42 acres. The property leased to ASUF will be comprised of approximately 37 acres. The balance of the property will be retained by Scottsdale for future development or disposition as determined by the City Council.
3. **Project Name.** The development on the leased premises will be known as the “ASU/Scottsdale Center for New Technology and Innovation” (hereinafter referred to as the “Center”).
4. **Anticipated Development.** It is currently anticipated that the Center, when and if fully developed, will be comprised of a number of buildings and plaza/landscaped open space areas and will include approximately 1,200,000 sq. ft. of leasable space. In addition, the Center will have approximately 3000-4000 parking spaces, principally in above-ground and/or below-ground parking structures. The permitted FAR (floor area ratio) will be 0.8; maximum building height will be 60 feet.
5. **Total Development Cost.** ASUF currently projects total Center development costs to be approximately \$250-\$300 million.
6. **Development Schedule.** It is currently anticipated that the entitlements process will be completed by or before July 1, 2005 and that Infrastructure construction (as defined below) will have commenced by that time. Assuming that these preliminary activities are timely undertaken or completed, ASUF will be required to meet the following development timetable:

❖ Commencement of construction of Building
No. 1 (not less than 150,000 sq. ft.) by or

before:

August 1, 2006

- ❖ Completion of construction of Building No. 1
(not less than 150,000 sq. ft.) by or before: August 1, 2007
- ❖ Completion of construction of Building No. 2
(not less than 150,000 sq. ft.) by or before: August 1, 2010
- ❖ An additional 150,000 sq. ft. (minimum)
of leasable building area must be completed
every three (3) years thereafter until complete
build-out.

Under this schedule, complete build-out is required by approximately 2028;
complete build-out is projected for approximately 2015

7. **Lease Term.** The term of the Lease will be 99 years. ASUF will have the right to extend the Lease for an additional 99 years.
8. **Remedy in the Event of Non-Performance.** If ASUF is unable to develop the Center in conformity with the prescribed timetable or if the character of the Center does not comply with the requirements of the Lease (see Paragraph 9, below), then the City will have the right to terminate the Lease as to all remaining undeveloped property.
9. **Nature of the Center.** ASUF will assure that, initially, not less than 51% of the leaseable area (exclusive of the retail area) will be occupied by organizations or businesses whose work or activities involve technology, innovation or creativity. With regard to the development of the Center as a whole, ASUF will support the goals and mission of Arizona State University and, recognizing the need, from time to time, to modify the composition of the tenant mix to respond to changing market conditions and to protect ASUF's and the City's investment in the Center, ASUF will maintain the character of the Center as a project for technology, innovation and creativity, until at least one million leasable square feet are constructed, or 2025, whichever is first to occur.
10. **City Expenditures Relating to the Center.** The City will acquire the Los Arcos property for \$41.5 million (plus closing costs), the acquisition price negotiated by the ASU Foundation in connection with its acquisition of the property. The City will also provide demolition, environmental remediation (if any), and grading for the property, and construction or installation of streets, landscaping, utilities, street lighting, parking, public art and other identified improvements (collectively, "Infrastructure"). The total cost of the Infrastructure to be borne by the City shall not exceed \$45.0 million. The City's total expenditure for land acquisition and improvements is thus capped at approximately \$86.5 million (exclusive of financing costs), of which approximately \$81.4 million is allocable to the leased premises.
11. **City Approvals.** All development on the leased premises will be subject to City zoning, design review, permitting and other approval processes. No fee

waivers, tax abatements, or sales tax reimbursements will be granted with respect to development of the Center by ASUF.

12. **Operation of the Center.** ASUF will be responsible for and control all leasing, marketing, operations, financing, development and construction of the Center and will manage (directly or through property management professionals) all day-to-day operations, including parking garage operations, landscape maintenance, rent collections, janitorial and security services, etc. ASUF currently contemplates engagement of a master developer or development team (selected through an RFP process) to assist in the planning, design and operation of the Center among other strategies.
13. **Rent/Recovery of City Investment.** ASUF will pay to the City, on an annual basis, fifty percent (50%) of the net revenues generated from the Center. These payments will be (i) subject to an aggregate cap of \$81.4 million; and (ii) will be computed after deducting from gross revenues received from Center tenants and visitors: (a) project-related operating and maintenance expenses; (b) debt service payments (principal, interest and impounds) relating to the Center; and (c) a reserve for tenant improvements and capital expenditures from the gross revenues (including parking revenues) received from Center tenants and visitors. In the event of a refinancing or sale, any net proceeds will be shared equally by ASUF and the City.
14. **Good Faith.** All obligations of the parties shall be undertaken and performed in a reasonable manner and in good faith. The parties recognize, however, that rents charged to certain Center tenants may be well below market, consistent with the purpose of attracting such businesses to Scottsdale and encouraging such businesses to utilize the personnel, programs and facilities available at Arizona State University.
15. **Dispute Resolution.** The remedies of the parties in the event of a dispute will be expressly limited. Further, the Lease will provide for a mandatory (executive level) meet and confer process in the event of a dispute; for formal mediation if the meet and confer process does not result in resolution of the dispute; and for binding arbitration in the event that both the meet and confer and mediation processes are unsuccessful.